

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Promotion of Competitive Networks)	WT Docket No. 99-217
In Local Telecommunications Markets)	
)	
Wireless Communications Association)	
International, Inc. Petition for Rulemaking)	
to Amend Section 1.4000 of the)	
Commission's Rules to Preempt)	
Restrictions on Subscriber Premises)	
Reception or Transmission Antennas)	
Designed to Provide Fixed Wireless)	
Services)	
)	
Cellular Telecommunications Industry)	
Association Petition for Rule Making and)	
Amendment of the Commission's Rules)	
to Preempt State and Local Imposition of)	
Discriminatory And/Or Excessive Taxes)	
and Assessments)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions in the Telecommunications Act)	
of 1996)	
)	

**COMMENTS OF
THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

The Cellular Telecommunications Industry Association ("CTIA")¹ hereby submits its Comments in the above captioned proceeding.² In the *Notice*, the Commission

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including 48 of the 50 largest cellular and broadband personal communications service ("PCS") providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

specifically seeks comments on access to rights-of-way, buildings, rooftops and facilities in multiple tenant environments.³ CTIA supports the Commission's effort to help ensure that competitive telecommunications services providers, including CMRS and non-CMRS wireless services, have reasonable and non-discriminatory access to rights-of-way, buildings, rooftops and facilities in multiple tenant environments. Such access is vital for all wireless service providers if they are to offer consumers a competitive and innovative alternative to traditional wireline service and offer basic telecommunications services to unserved areas. To foster competition in local telecommunications markets, the Commission must take action that dismantles practices and policies that obstruct reasonable and nondiscriminatory access to needed facilities. Moreover, such action must not directly or indirectly result in disparate regulatory treatment among wireless service providers.

Barriers to Competition

The Commission is well aware of the policies and practices that have obstructed competitive service providers' efforts to obtain reasonable and nondiscriminatory access to essential rights-of way and facilities within multiple dwelling units.⁴ The deleterious

² In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets; Wireless Communications Association International, Inc. Petition for Rulemaking to Amend Section 1.4000 of the Commission's Rules to Preempt Restrictions on Subscriber Premises Reception or Transmission Antennas Designed to Provide Fixed Wireless Services; Cellular Telecommunications Industry Association Petition for Rule Making and Amendment of the Commission's Rules to Preempt State and Local Imposition of Discriminatory And/Or Excessive Taxes and Assessments; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996. Notice of Proposed Rulemaking and Notice of Inquiry in WT Docket No. 99-217 and Third Further Notice of Proposed Rulemaking in CC Docket No. 96-98. FCC 99-141 (rel. July 7, 1999) ("Notice").

³ Notice at 1, 15-26.

⁴ Notice at 16-18, ¶ 31. See also In the Matter of Implementation of Section 6001(b) of the Omnibus Budget Reconciliation Act of 1993: Annual Report and Analysis of Competitive Market

effect of such policies and practices on competition in the local telecommunications market is well documented,⁵ and it is unnecessary to revisit them here. In view of the record, CTIA submits that there is ample evidence to support timely and legally permissible action by the Commission on this issue.

Similar Regulatory Treatment Among Fixed Wireless Services Providers

It is well settled that "wireless licensees providing fixed wireless services have the potential to create facilities-based competition in numerous industries beyond the traditional mobile markets."⁶ The Commission jumpstarted such competition in 1996 when it determined that the public interest would be served by allowing CMRS licensees maximum flexibility in the uses of CMRS spectrum.⁷ The Commission specifically acknowledged that "[a]llowing [CMRS] service providers to offer all types of fixed, mobile, and hybrid services will allow CMRS providers to better respond to market demand and increase competition in the provisions of telecommunications services."⁸ Thus, CMRS providers are now permitted to offer fixed services, excluding broadcast

Conditions with Respect to Commercial Mobile Services, *Fourth Report*, FCC 99-136, (rel. June 24, 1999) F14-F16 ("*Fourth CMRS Competition Report*").

⁵ Notice at 16-17, nn. 62-64.

⁶ *Fourth CMRS Competition Report* at F-1. See also Hilary Smith, *WLL Strengthens in Rural Markets*, RCR, June 14, 1999, at 16; Leslie Cauley and Nicole Harris, *'Fixed Wireless' Is Attracting Investments From Big Firms*, WALL ST. JOURNAL, June 3, 1999, <<http://interactive.wsj.com>>; Nate Palmer, *The Wireless Local Loop: A Matter of Simple Economics*, TELEPHONY, June 3, 1996, at 60; PETER D. HART RESEARCH ASSOCIATES, INC., DYNAMICS AND TRENDS IN THE WIRELESS MARKETPLACE 6 (Jan.1999) <<http://www.wow-com.com/statsurv/survey/hart>>.

⁷ In the Matter of Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, WT Docket No. 96-6, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8965, 8966 (1996) ("*CMRS Flexible Use Order*").

⁸ Id.

services, in CMRS spectrum, either on a primary basis, a co-primary basis, or any combination of the two.⁹

Since the adoption of the Commission's CMRS flexible use rules, the number of telecommunications services providers offering fixed wireless services have grown dramatically.¹⁰ Much of this growth can be attributed to the Commission's decisions to allow licensees of non-CMRS spectrum to offer fixed wireless services, *i.e.*, MMDS, DEMS, LMDS, and 39 GHz.¹¹ While the Commission has yet to address the regulatory treatment of CMRS fixed wireless services,¹² it is imperative to the growth of fixed wireless services and competition in the local telecommunications market that CMRS and non-CMRS fixed wireless service providers are treated similarly with respect to any Commission action that provides reasonable and non-discriminatory access to rights-of-way, buildings, rooftops, and facilities in multiple tenant environments. Extending consistent regulatory treatment to all wireless service providers on such access issues will

⁹ See 47 C.F.R. §§ 22.901(d), 24.3, and 90.419 (1998).

¹⁰ See WIRELESS WEEK, *Update: LMDS Auction Top 15 Spectrum Winners* (visited Aug. 27, 1999) <<http://www.wirelessweek.com/industry/lmdsup.htm>>. See also Leslie Cauley and Nicole Harris, 'Fixed Wireless' Is Attracting Investments From Big Firms, WALL ST. JOURNAL, June 3, 1999, <<http://interactive.wsj.com>>.

¹¹ See In the Matter of Amendment of Parts 1, 21, and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmission, MM Docket No. 92-217, *Report and Order*, 13 FCC Rcd 19112 (1998); In the Matter of Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, CC Docket No. 92-297, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking*, 12 FCC Rcd 12545 (1997); In the Matter of Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, ET Docket No. 95-183, *Report and Order and Second Notice of Proposed Rulemaking*, 12 FCC Rcd 18600 (1997) (The 39 GHz spectrum auction tentatively scheduled to begin the 2nd quarter of 2000).

promote competition in the local telecommunications market. Accordingly, the Commission must ensure that whatever regulatory relief it proscribes to address access barriers, such action must afford comparable relief to both CMRS and non-CMRS wireless service providers.

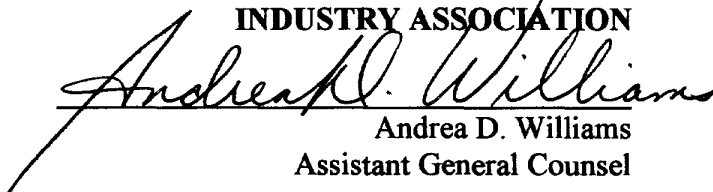
¹² *CMRS Flexible Use Order*, 11 FCC Rcd at 8982 (adoption of a Further Notice of Proposed Rulemaking).

Conclusion

For the foregoing reasons, CTIA respectfully requests the Commission to help ensure that both CMRS and non-CMRS fixed wireless service providers obtain reasonable and non-discriminatory access to essential rights-of way, building, rooftops, and facilities within multiple tenant environments.

Respectfully submitted,

**CELLULAR TELECOMMUNICATIONS
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